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Status of the Convention on the Rights of the Child*

Report of the Secretary-General

Summary

In its resolution 70/137, the General Assembly requested the Secretary-General to submit to the Assembly at its seventy-first session a report on the status of the Convention on the Rights of the Child and the issues addressed in the resolution, with a focus on migrant children. The present report is submitted in accordance with that request.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. In its resolution 70/137, the General Assembly requested the Secretary-General to submit to the Assembly at its seventy-first session a report on the status of the Convention on the Rights of the Child and the issues addressed in the resolution, with a focus on migrant children. The present report is submitted in accordance with that request.

II. Status of the Convention

2. As at 1 July 2016, the Convention on the Rights of the Child had been ratified or acceded to by 196 States. Somalia ratified the Convention on 1 October 2015. One Member State, the United States of America, is not yet party to the Convention.

3. In addition, as at 1 July 2016, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict had been ratified or acceded to by 165 States; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography had been ratified or acceded to by 173 States; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure had been ratified or acceded to by 27 States.

III. Reporting under the Convention

4. During the reporting period, the Committee on the Rights of the Child held its seventieth to seventy-second sessions.

5. As at 1 July 2016, the Committee had received initial reports from all but two States parties, namely, Tonga and the State of Palestine. All the initial reports that had been submitted, with the exception of that of Nauru, had been reviewed by the Committee. In total, the Committee has received 502 initial and periodic reports, including combined periodic reports, submitted pursuant to article 44 of the Convention.

6. In addition, the Committee had received 109 initial reports and 2 periodic reports under the Optional Protocol to the Convention on the involvement of children in armed conflict and 98 initial reports and 2 periodic reports under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

7. The Chair of the Committee will present an oral report on the work of the Committee and engage in an interactive dialogue with the General Assembly at its seventy-first session as a way to enhance communication between the Assembly and the Committee, in accordance with resolution 70/137.

IV. Rights of children in the context of migration

A. Human right of children to be treated first and foremost as children

8. The realization of the human right of children to be treated first and foremost as children, regardless of their migratory status or the migratory status of their parents, remains uneven. The present report considers children in the context of migration, including those migrating internally or internationally, those forcibly displaced across borders or within their own country and those affected by the interlinkage of migration and statelessness. Although some regions have made rapid progress in increasing the protection of and access to basic services for some categories of children affected by migration, in particular refugee children, in other regions progress has been less marked, and in many regions children who are found not to be refugees as defined in international refugee law have faced significant difficulties in gaining access to basic services. At the same time, progress is being made on the ground, including in response to some of the largest documented movements of forcibly displaced people in some regions in more than half a century. Such efforts need to be bolstered in order to guarantee that all children everywhere receive the protection, assistance and services that are their right, and that their best interests remain the primary consideration.

B. Rights of children affected by migration in international law

9. Article 2 (1) of the Convention on the Rights of the Child states that "States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The Committee on the Rights of the Child and other experts have asserted that the enjoyment of rights stipulated in the Convention is not limited to children who are nationals of a State.

10. The International Covenant on Civil and Political Rights provides a further example of the general principle of equality that underlies international human rights law as it relates to non-nationals and the limited scope of exceptions to that principle. According to article 2 (1) of the Covenant, "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". In its general comment No. 15 (1986) on the position of aliens under the Covenant, the Human Rights Committee stated that "the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens".

11. The right of migrant children to be treated without discrimination, including with respect to their social, cultural and educational rights, is also rooted in article 2 of the Universal Declaration of Human Rights and article 2 of the International

Covenant on Economic, Social and Cultural Rights. The latter affirms the right of everyone to education, compelling States parties to respect, protect and fulfil that right on the basis of non-discrimination and equality of opportunity. The Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families reaffirm the principle of non-discriminatory application of human rights guarantees and access to services for migrants and their families, including children affected by migration.

12. The Guiding Principles on Internal Displacement (see E/CN.4/1998/53/Add.2) include a restatement and compilation of international human rights and humanitarian law relevant to internally displaced persons, including children. The Principles address the special needs of such children for protection and assistance (Principle 4.2), in particular their right to education (Principle 23).

13. A number of global political commitments have been made during the past two decades to reinforce the commitment to non-discrimination with respect to migratory status, in particular for children, in gaining access to services and in the fulfilment of human rights, and to support the rights of migrants, including migrant children. In target 10.7 of the Sustainable Development Goals (see General Assembly resolution 70/1), States committed themselves to facilitating orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies, involving full respect for human rights and the humane treatment of migrants regardless of migration status. In 2012, during its fifty-ninth session, the Committee on the Rights of the Child devoted its day of general discussion to the rights of all children in the context of international migration.

14. The Committee on the Rights of the Child reaffirmed the obligation of States to guarantee all of the rights enshrined in the Convention on the Rights of the Child to all children within their jurisdictions, in accordance with the following key tenets:

(a) That children affected by migration are entitled to the same fundamental rights, treatment, services and protection as non-migrant children;

(b) That a comprehensive human rights-based approach be adopted that holistically takes stock of the rights and needs of such children rather than categorize them as irregular, trafficked, unaccompanied or asylum-seeking, categories that can be fluid and temporary and fail to reflect the complexity of migration dynamics;

(c) That the principle of the best interests of the child be a primary consideration for States when making decisions that affect migrant children.

15. The Committee also recommended that the implementation of the Convention with regard to children in the context of migration should be monitored. It called upon States parties to incorporate a systematic evaluation of the implementation of the Convention in relation to all children affected by migration who were present in their territories into their periodic reporting to the Committee. The Committee has also requested State parties to empower national institutions responsible for

guaranteeing human rights, including ombudsmen and equality bodies, to play a key role in monitoring compliance with the Convention, with a specific mandate to address the needs of children affected by migration.[1]

16. In the report of the Secretary-General for the World Humanitarian Summit entitled "One humanity: shared responsibility" and the Agenda for Humanity annexed thereto (see A/70/709), specific actions to address the protection and assistance needs of internally displaced persons, including children, were enumerated. In addition, the Nansen Initiative has been building consensus on a protection agenda for those forcibly displaced across borders by natural disasters and climate change, highlighting the specific needs of children.[2]

C. Rights of children affected by migration in regional law

17. Regional conventions and treaties further reinforce the principles of non-discrimination on the basis of national origin or migratory status. Article 2 of the African Charter on Human and Peoples' Rights contains commitments to non-discrimination, while right to freedom of movement and the right to seek asylum are addressed in article 12. Those principles are reaffirmed specifically with respect to children in the African Charter on the Rights and Welfare of the Child, article 23 of which indicates that refugee children, whether unaccompanied or accompanied by parents, legal guardians or close relatives, should receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the Charter and other international human rights and humanitarian instruments. Article 1 of the American Convention on Human Rights contains similar provisions; in article 19 it is affirmed that the child has the right to measures of protection required by his condition as a minor on the part of his family, society and the State; and in article 22 the rights of individuals to leave any country freely, including his own, and to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State and international conventions, are affirmed. In article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the obligation of States to not discriminate on the basis of national origin are reaffirmed. Notwithstanding such affirmations, regional borders and bilateral agreements, including readmission agreements, remain areas in which children's rights and child protection are largely absent.[1]

V. Realizing the rights of children in the context of migration

A. Promoting safe, orderly and regular migration, with full respect for human rights

18. According to data from the Department of Economic and Social Affairs of the Secretariat, approximately 15 per cent of the world's total migrant population, or some 35 million individuals, are below 19 years of age. However, according to the

[1] See Committee on the Rights of the Child, "Report of the 2012 day of general discussion: the rights of all children in the context of international migration".

[2] See https://nanseninitiative.org/.

Office of the United Nations High Commissioner for Refugees (UNHCR), approximately 50 per cent of the world's involuntarily displaced, or some 30 million people, including refugees, asylum seekers and internally displaced persons, are children, around half of whom are female.[3] In 2014, 86 per cent of the world's refugees resided in developing countries. According to the Internal Displacement Monitoring Centre, almost 40 million individuals, of whom around half were children, had been internally displaced within their own countries by the end of 2014.

19. In addition to the full enjoyment of their human rights under all nine core international human rights treaties,[4] regardless of their migration status, migrant children should also enjoy rights and protection under various branches of international law, including refugee, labour, humanitarian, maritime, transnational criminal, nationality and consular law. Several international legal instruments grant specific forms of protection to migrant workers and their families, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and relevant International Labour Organization (ILO) instruments, including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143), and the Domestic Workers Convention, 2011 (No. 189). The ratification and effective implementation of the existing normative frameworks are important and urgent steps towards realizing the rights of migrants and migrant children, facilitating safe, fair, regular and orderly migration, reducing the incidence of exploitation and abuse associated with migration, especially for children, and enhancing international cooperation on migration.

20. Many migrant children, especially those who are unaccompanied or have been separated from their parents and families, and those migrating through irregular channels, are particularly vulnerable in their countries of origin, in countries of transit, upon arrival at their destinations and during the process of return or upon return to their countries of origin. Guided by the principle of acting in the best interests of the child, the specific needs and vulnerabilities of those children must be documented and highlighted, with a view to accelerating the provision of rights-based assistance and protection. International organizations and entities have developed guidance to address the practical needs of migrants and their families such as the Fair Migration Agenda,[5] the Multilateral Framework on Labour Migration,[6] the Recommended Principles and Guidelines on Human Rights at

[3] See Office of the United Nations High Commissioner for Refugees (UNHCR), "UNHCR mid-year trends 2014" (Geneva, 2015); UNHCR, "UNHCR mid-year trends 2015" (Geneva, 2015).

[4] The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

[5] ILO, *Fair Migration: Setting an ILO Agenda* (Geneva, International Labour Office, 2014).

[6] ILO, *ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* (Geneva, 2006).

International Borders,[7] the Migration Governance Framework[8] and Migration Crisis Operational Framework.[9] The Inter-Parliamentary Union, ILO and the Office of the United Nations High Commissioner for Human Rights (OHCHR) recently developed a handbook for parliamentarians on migration, human rights and governance.[10] The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child are developing a joint general comment to provide guidance on children in the context of international migration.[11]

21. In the absence of sufficient and accessible safe and regular pathways for moving to other countries, children are often compelled to undertake risky and lengthy sea, land or air journeys in order to flee persecution or conflict or in response to other drivers of forced movement such as extreme poverty, discrimination, denial of their human rights, including the right to health or education, and the consequences of environmental degradation. Without safe alternatives, they may resort to the services of criminal networks to cross international borders. The rising number of children, including those who are unaccompanied, taking part in large-scale movements through irregular channels is of grave concern. Between January and mid-July 2016, almost 240,000 people, more than one third of whom were children, crossed the Mediterranean, often under dangerous conditions owing to lack of alternatives.[12] In accordance with international law, in particular the United Nations Convention on the Law of the Sea, all persons in distress at sea must be rescued and brought to a place of safety. While States have increased their efforts to enhance rescue and interception measures at sea, including through the Triton and Poseidon joint operations of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), more needs to be done to ensure that those responsible for rescue, interception, transport and transfer operations acknowledge and respond to the needs and rights of children, whether they arrive by land, sea or air. Child-specific and gender-specific measures must be in place at all stages of rescue operations, including at the planning stage.

B. Preventing exploitation and abuse, including trafficking

22. Smuggling of migrants and trafficking in persons are distinct crimes under the United Nations Convention against Transnational Organized Crime and its supplementary Protocols against trafficking in persons and the smuggling of

[7] OHCHR, "Recommended principles and guidelines on human rights at international borders" (Geneva, 2014).

[8] International Organization for Migration (IOM), "Migration governance framework: the essential elements for facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies", 106th session, No. C/106/40 (4 November 2015).

[9] IOM, "Migration crisis operational framework", 101st session, No. MC/2355 (15 November 2012).

[10] Inter-Parliamentary Union, ILO and OHCHR, *Migration, Human Rights and Governance: Handbook for Parliamentarians*, No. 24 (Geneva, 2015).

[11] See www.ohchr.org/EN/HRBodies/CMW/Pages/JointGeneralCommentonChildren.aspx.

[12] IOM, "Mediterranean update: migration flows Europe — arrivals and fatalities".

migrants. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air contain special measures and forms of protections for children. About two thirds of all Member States have ratified those two protocols.

23. Children travelling unaccompanied or travelling with their families face particular risks when migrating through irregular channels, including those of exploitation, sexual and gender-based violence, family separation, psychosocial stress and trauma, health complications and physical harm and injury.[13] All children, in particular unaccompanied and separated children, should have access to services along their routes, including legal advice and counselling on their specific situations and options. In response to the recent large-scale movement of refugees into Europe, UNHCR and the United Nations Children's Fund (UNICEF) have collaborated to establish 20 special support centres for children and families along the most frequently used migration routes in Europe.[14] Each centre provides a safe space to children and their families, vital services, protection, counselling and recreation for children in a single location, with the aim of supporting vulnerable families. Governments, in collaboration with United Nations agencies, non-governmental organizations (NGOs) and civil society organizations, provided support to migrants stranded on the Andaman Sea in 2015, as well as to migrants moving from Latin America into Mexico, and from the Horn of Africa into Europe. Strengthened and harmonized cross-border information-sharing mechanisms can better protect at-risk children on their journeys.[15] Child-safeguarding policies[16] should be incorporated into manuals on search and rescue operations and implemented during such operations.

C. Meeting the humanitarian and human rights protection needs of children in the context of migration

24. States have a responsibility to ensure that their border procedures and reception procedures for refugees, asylum seekers and migrants protect human rights and are sensitive to the particular needs of children, who may be at particular risk. The immediate needs of all children, regardless of their migration status, must be met, and boys and girls with specific needs must be referred to the appropriate services. The Government of Zambia, for example, has established a mechanism to identify vulnerable migrants, including unaccompanied and separated children and stateless migrants, for referral to the appropriate services.[17] Claims made by children should be processed with priority and through accelerated procedures that respect the best interests of the children and procedural safeguards. Guidance on

[13] UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014).

[14] See www.unhcr.org/en-us/news/press/2016/2/56d011e79/unhcr-unicef-launch-blue-dot-hubs-boost-protection-children-families-move.html.

[15] See UNICEF, "Call for action: protecting of the rights of refugee and migrant children arriving in Europe" (2016).

[16] See www.keepingchildrensafe.org.uk/sites/default/files/resource-uploads/KCS_STANDARDS_2014.pdf.

[17] R. Sampson and others, *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*, revised ed. (Melbourne, International Detention Coalition, 2015).

procedures at borders and for the reception of migrants includes the Recommended Principles and Guidelines on Human Rights at International Borders, the Migration Crisis Operational Framework and the 10-point plan of action on refugee protection and mixed migration of UNHCR,[18] all of which contain recommendations specific to children.

25. It is essential that States have national child protection systems and that they take measures to ensure that migrant and refugee children are provided with care and services that equal those provided to nationals. In the United Kingdom of Great Britain and Northern Ireland, for example, an unaccompanied child is the responsibility of the local authority in which he or she is present, in the same way as is any child national who is deprived of parental care. Upon the arrival of an unaccompanied child, the social services department of the local authority assesses the child's needs and provides assistance. Many States, however, need to improve their systems. As OHCHR noted in 2010, most national childhood policies do not take account of the needs and rights of migrant children, who can be excluded explicitly or in practice from the protection of legislation and regulations put in place by Governments to protect children who are nationals (see A/HRC/15/29). More data and information are needed regarding the situation of refugee and migrant children, their needs and the risks that they face. The development of specialized services and social policies should be guided by such data.

26. Home-based, family-based and community-based accommodation for refugees and migrants should be available, with refugee and migrant children and their families accorded priority for placement in such settings. In Lebanon, for example, several alternative shelters are available specifically for women, children and unaccompanied minors.[19] Should such accommodation not be available, however, the relevant reception centre should meet the needs of children in its design, functioning and equipment. There should be sufficient gender-segregated and age-segregated safe spaces, gender-segregated water, sanitation and hygiene facilities and safety and security measures for children and women. Accessibility for children and parents with disabilities should also be anticipated.

27. Reception centres should ensure access to basic services for children and their families, including medical first aid, adequate food and non-food supplies, mother and child safe spaces, child-friendly spaces and recreational activities for children, counselling and education, and provide referrals to specialized services when needed, including hospitalization, guardians for minors and specialized mental health care. Facilities receiving children, whether they are unaccompanied, separated or with their families, should have in place clear procedures for reporting any child protection concerns and adequate follow-up procedures. All centres should be independently monitored, including through consultations with child and adult refugees and migrants.

[18] UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action* (Geneva, 2011).

[19] See International Detention Coalition, interactive map. Available from http://idcoalition.org/interactive-map-alternatives-to-detention/?location=lebanon.

D. Preventing childhood statelessness

28. Statelessness, or the condition of a person who is not considered as a national by any State, can be both a cause and a consequence of migration. UNHCR estimates that more than 10 million people worldwide, many of whom are children, are stateless. The consequences for stateless children can be serious: in more than 30 countries, children need nationality documentation to receive medical care; in at least 20 countries, stateless children cannot be legally vaccinated.[20] Stateless children often face severe restrictions in gaining access to basic services and in fulfilling their basic human rights, circumstances that, for many, are migration-motivating factors. Several countries, most notably in Central Asia and West Africa, have adopted national action plans on reducing statelessness by promoting systematic birth registration of migrants and carrying out field surveys. Other countries, including Armenia, Estonia, Latvia and Montenegro, have implemented legislative changes to address statelessness.[21]

29. A key action to preventing statelessness is to provide birth registration to all children, including those who are born to refugee, asylum-seeking and migrant parents. UNHCR and UNICEF have both successfully implemented programmes to ensure birth registration for refugee populations in camp and urban settings,[22] and UNICEF is working in more than 80 countries to improve national capacities to reach full registration, in line with target 16.9 of the Sustainable Development Goals.

VI. Due process and fair trial guarantees in migration proceedings for children

30. The Committee on the Rights of the Child has recommended that migration proceedings concerning children be conducted in a prompt, child-friendly, multidisciplinary and culturally and gender-sensitive manner by officials with expertise in children's rights.[1] However, the Committee noted that, in many countries of destination, migration procedures and decisions were not conducted in accordance with the standards and due process spelled out in the Convention on the Rights of the Child, other international human rights treaties and other instruments of international law.[23] In an effort to address such concerns, child-specific measures, including keeping interviews to a minimum and using child-sensitive interview techniques, are increasingly being utilized.[24] For example, Argentina, through its Act No. 25.871 of 2010, introduced due process safeguards in its deportation procedures, including the right to appeal with suspensive effect, the right to free legal aid and the right to access to justice.

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[20] UNHCR, "I am here, I belong: the urgent need to end childhood statelessness". Available from www.unhcr.org/ibelong/the-urgent-need-to-end-childhood-statelessness/.

[21] UNHCR, "Resolving existing major situations of statelessness", Good Practices Paper, Action 1 (Geneva, 2015).

[22] UNICEF, *A Passport to Protection: A Guide to Birth Registration Programming* (New York, 2013).

[23] Committee on the Rights of the Child, "2012 day of general discussion: the rights of all children in the context of international migration — background paper", 2012.

[24] ILO, *Strengthening Action to End Forced Labour* (Geneva, International Labour Office, 2013).

31. The right of the child to be heard, articulated in the Convention on the Rights of the Child, extends to matters and decisions on immigration and asylum procedures, in accordance with a child's evolving age, capacity and maturity. For example, the Constitutional Court of Spain has upheld the right of the child to be heard in the context of unaccompanied children facing repatriation or deportation (see A/HRC/15/29). The right of the child to be heard includes the right to be informed in a language and manner that the child understands, including with respect to options and potential consequences (see CRC/C/GC/12). The Committee on the Rights of the Child suggests that the right to be heard encompasses having access to administrative and judicial remedies against decisions on their own situation or the ones on their parents to guarantee that all decisions are taken in their best interests.[23] In Bulgaria, social workers from the child protection units of the Agency for Social Assistance provide advice to children on their rights and on the possibilities for receiving support and protection.

32. To implement child-sensitive due process, duty bearers and front-line workers must have specific capacities and knowledge of child rights and protection standards.[23] To that end, and in response to large movements of migrants, UNICEF provided child rights training to front-line workers in Afghanistan, Bangladesh, Croatia, Mexico, Myanmar, Serbia and the former Yugoslav Republic of Macedonia. At the institutional level, the enforcement of migration policies should include the oversight of agencies specializing in children's rights.[1] The creation by Mexico of a body of child protection officers within the National Institute of Migration is an example of how an increase in specialized training can contribute to child-sensitive migration procedures. Another example is that of South Africa, where unaccompanied migrant children are assigned a social worker, who can refer them to a children's court so that an alternative care order can be issued.[25]

33. Pursuant to article 2 of the Convention on the Rights of the Child, immigration and border control measures should be developed in a manner that takes into account the best interests of the child and the principle of non-discrimination. The Committee on the Rights of the Child recommends that States should set up a best interest determination procedure to consider and decide what is in the best interests of the child on a case-by-case basis, including a clear and comprehensive assessment of the child's circumstances that should take into account the child's views.[23] Such State-implemented procedures are in place in Argentina, Mexico and several European States.

34. The Committee on the Rights of the Child has advised that for States, making a child's best interests the primary consideration implies that every decision to repatriate must reflect careful consideration of the child's health and psychosocial needs, consistent with ensuring the development of the child to the maximum extent possible (see art. 6 (2) of the Convention). In that regard, it is best practice to also consider a child's right to education, adequate living conditions and the presence of a caretaker. The European Union is currently piloting the use of child-sensitive country-of-origin information to guide asylum decisions, in recognition of the fact that most country-of-origin information currently lacks a child-specific focus.

[25] Department of Social Development, "Guidelines on separated and unaccompanied children outside their country of origin in South Africa" (2009).

35. With regard to the treatment of unaccompanied and separated children, States are required to take measures necessary to secure the proper representation of the child's best interests (see CRC/GC/2005/6). To that end, guardians with expertise in child care who are supervised by national child protection authorities are key to protecting the best interests of the child. In the Netherlands, for example, NGOs cooperated with national authorities to develop core standards to guide guardians in their daily work with unaccompanied children.[26] Agencies or individuals whose interests could potentially conflict with those of the child should not be eligible for guardianship (see CRC/GC/2005/6).

36. While the repatriation of undocumented children continues to often be used as a measure to punish individuals for irregular entry into a territory, States should only repatriate children only as a measure of protection, for example, to ensure family reunification when it is in the child's best interests and at the conclusion of a due process of law (see A/HRC/15/29). The Regional Conference on Migration,[27] an intergovernmental body of 11 countries in North and Central America, has declared that the decision to repatriate unaccompanied children must always take into account their best interests.[28] UNICEF and UNHCR have jointly developed guidelines to inform the current response by States in Europe to ensure respect for the best interest of unaccompanied and separated children.[29] Many asylum-seeking children have not been granted refugee status but instead have been provided with subsidiary protection on humanitarian grounds, which they can lose upon reaching 18 years of age. Germany allows for the temporary extension of that protection in order to complete school or vocational training.

37. Accurate age assessment is key to ensuring the protection of the rights of migrant children. Any assessment that goes beyond interviewing the child should be carried out only as a measure of last resort. The age estimation procedure should draw upon assessments by psychologists, social workers and others, be child-friendly and gender-friendly and multidisciplinary.[30] In recognition of the difficulty of accurately estimating the age of children, the presumption-of-age method applied in Sweden includes a margin of error to allow for discrepancies that works to the benefit of the child; for example, when the child is estimated to be of an age that falls within the range of 9 to 18 years, a 24-month margin of error is applied.[31]

38. The right to family may be severely affected in the context of international migration. Children born in destination countries to undocumented migrant parents may be denied their right to family life owing to the deportation of one or both parents, even if the children have acquired nationality. In addition, a growing number of countries are restricting family reunification policies,[23] while the interpretations by administrative and judicial bodies of the right to family life within

[26] Defence for Children — ECPAT The Netherlands, *Core Standards for Guardians of Separated Children in Europe: Goals for Guardians and Authorities* (Netherlands, 2011).

[27] See www.rcmvs.org/.

[28] See the Declaration of the XIV Regional Conference on Migration (Guatemala City, July 2009).

[29] UNHCR and UNICEF, "Safe & sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe" (Brussels and New York, 2014).

[30] See for example UNHCR, "Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum" (Geneva 1997).

[31] UNICEF, "Reference guide on protecting the rights of child victims of trafficking in Europe". Available from www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf.

the context of migration are also becoming more restrictive. At the same time, children and adolescents across the globe migrate under precarious and irregular circumstances, including unaccompanied, in order to reunite with their parents, legal guardians or other caregivers (see A/HRC/15/29). Regional human rights courts have urged State authorities to facilitate family reunification and repeatedly encouraged them to abstain from making decisions that separate children from their families unless it is in the child's best interests as determined through a comprehensive assessment.[23] On the other hand, the maintenance of family unity should never be used as a justification for the detention of child migrants.[1]

VII. Ending the detention of child migrants

39. Children, as a matter of principle, should never be detained for purposes of immigration control. However, children continue to face detention based on their or their parents' migratory status or undocumented entry into a country. The Committee on the Rights of the Child has affirmed that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof (see CRC/GC/2005/6). However, the increasing criminalization of the irregular movements that have occurred in 2016 (see A/70/59) is likely to result in increasing numbers of children being detained. Stateless persons, including children, face a particularly high risk of indefinite detention.[32] That includes the detention of migrant children with their parents on the premise of maintaining family unity, in violation of the principle of the best interests of the child.[1]

40. Both Mexico and Panama prohibit the detention of child migrants. The Council of Europe Strategy for the Rights of the Child (2016-2021) contains specific provisions on migration and proposes that every effort be made to end the placement of children in immigration detention facilities.[33] Those provisions reflect resolution 2020 (2014) of the Parliamentary Assembly, in which member States were called upon to urgently put an end to the detention of migrant children by introducing legislation prohibiting their detention and providing non-custodial community-based alternatives. In some situations, children are placed in immigration detention as a substitute for care arrangements (see A/HRC/15/29). To the greatest extent possible, and always using the least restrictive means necessary, more States need to adopt human rights-compliant, non-custodial and community-based alternatives to detention in accordance with the best interests of the child. In Yemen, a community-driven alternative care system consisting of small group homes was established for asylum-seeking and refugee children by the local authorities and UNHCR in cooperation with refugee leaders.[34]

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[32] European Network on Statelessness, "Protecting stateless persons from arbitrary detention" (London, 2015); OHCHR, "Administrative detention of migrants". Available from www2.ohchr.org/english/issues/migration/taskforce/docs/administrativedetentionrev5.pdf.

[33] Council of Europe, "Protecting children affected by the refugee crisis: a shared responsibility — Secretary General's proposals for priority actions", 4 March 2016.

[34] UNHCR, "Options for Governments on care arrangements and alternatives to detention for children and families", Options Paper 1 (Geneva, 2015).

VIII. Integration and access to basic services for children in the context of migration

41. It is vital to provide immediate humanitarian assistance and to address the immediate protection needs of migrant children. It is also essential that States implement integration programmes and make greater efforts to mainstream both refugee and migrant children into national and local development plans so as to ensure their educational and livelihood needs while strengthening the resilience of and development opportunities for host communities. Those communities, directly affected by the arrival of large numbers of refugees and migrants, may benefit from the support and expertise of development actors such as the United Nations Development Programme, UNICEF and the World Bank. In that context, the international community has increasingly acknowledged the need to strengthen the nexus between humanitarian and development assistance, in particular in response to large movements of refugees and migrants.

42. Measures to promote the inclusion of migrant children in national educational systems represent a sound investment, given that they increase the chances of those children becoming adults who find jobs, pay taxes and use fewer public services should they remain in the host country, thereby contributing to the maintenance of social cohesion. There should be no lost generation of refugee and migrant children. In many countries, primary education is compulsory and available to all refugee and migrant children; such educational opportunities should be expanded at all levels. There is a growing body of evidence and of good practice on ways to include migrant children and young people in educational and social activities.[35]

43. Several States and local authorities use various means to facilitate the access of migrant and refugee children to basic educational, social and health-care services. Argentina, for example, has passed legislation that explicitly enumerates the rights of migrants to gain access to services on an equitable basis with nationals.[36] In many cities, including Geneva, Munich, Germany, and Seoul, "firewalls" have been placed between service providers and immigration authorities to protect confidentiality and allow migrants, including those of irregular status, to gain access to services without fear of reprisal. Such actions are supported by the Special Rapporteur on the human rights of migrants and the Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.[37]

44. Xenophobic and racist responses to refugees and migrants, including children, appear to be increasing and achieving greater levels of public acceptance. Policy and public discourse on migrants and refugees must shift from a focus on threat to a focus on international solidarity, and emphasize the fact that migrant and refugee children are, first and foremost, children. International and non-governmental entities such as ILO, IOM, OHCHR, UNHCR, UNICEF and Terre des Hommes International Federation have been using social media and other non-traditional platforms to counter xenophobic and racist discourse aimed at refugees and

[35] See, for example, European Union and Organization for Economic Cooperation and Development, *Indicators of Immigrant Integration 2015: Settling In* (OECD Publishing, Paris, 2015).

[36] See, for example, Act No. 25.871 of 2010 and Decrees Nos. 836/04 and 578/05.

[37] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16886&LangID=E.

migrants,[38] while regional intergovernmental bodies such as the African Union and the European Union have condemned xenophobia in all its forms and manifestations.

45. Authorities should begin as soon as possible to work with a child towards a durable solution in order to avoid prolonged exposure of the child to a situation of legal and psychological insecurity. In particular, if a child is to be returned after a thorough risk assessment has been conducted by trained and independent child protection officers, a documented best interest determination process and a support plan should be in place before return procedures begin.

46. Reintegration support for children who have been returned to their country of origin needs to be child-focused and take special account of child-specific needs such as reintegration at school, access to psychosocial support and social inclusion. Specific funds need to be invested in ensuring that reintegration support is available and of good quality. Regular monitoring should be conducted, including by independent child rights bodies and civil society. For example, the Government of Ethiopia ensures family tracing and reunification and the reintegration of children who are voluntarily returning to the country.

47. States should move to relieve the burden on host countries by expanding means of admission for refugee and migrant children. That can be achieved by enhancing resettlement, medical evacuation and humanitarian admission programmes, temporary evacuation programmes, opportunities for skilled migration, labour mobility and education, and expanding criteria for family reunification.

48. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in its general comment No. 2 (2013), highlighted the importance of regularization as a means of addressing the needs and vulnerabilities of migrant children, noting that:

> Regularization is the most effective measure to address the extreme vulnerability of migrant workers and members of their families in an irregular situation. States parties should therefore consider policies, including regularization programmes, for avoiding or resolving situations whereby migrant workers and members of their families are in, or are at risk of falling into, an irregular situation.

IX. Way forward

49. **Sustainable development begins and ends with safe, healthy and well-educated children, including migrant children (both regular and irregular), children born to migrant parents and children left behind by migrating parents. Societies can develop in a sustainable manner only if the basic needs and rights of all children, in particular the poorest and most vulnerable, are met. The protection of children is a central pillar of the 2030 Agenda for Sustainable Development. Peace, respect for human rights and the protection of**

[38] See, for example, the "I am a migrant" campaign of IOM, the "#with refugees" campaign of UNHCR and the "#ActofHumanity" campaign of ILO, OHCHR and UNICEF. See also www.ohchr.org/EN/Issues/Migration/Pages/InternationalMigrantsDay2013.aspx and http://destination-unknown.org.

the most vulnerable, including protection from all forms of violence, are essential underpinnings of an integrated framework for sustainable and sustained development. In seeking to attain universal goals, attention should be focused on those who are worst off so that no child, whatever her or his migration status, is left behind.

50. Children and young people can reap the benefits of migration only if their rights are protected, respected and fulfilled. Migration can enable equitable, inclusive and sustainable social and economic development that benefits countries of origin and destination, but first and foremost, it can enable the human development of migrants and their families.

51. Children in the context of migration are more vulnerable to violence in countries of origin, transit and destination. That vulnerability is due to specific migration-related factors such as parental absence, legal and social exclusion and xenophobia. Some of those vulnerabilities are gender-based. To address those risk factors and human rights challenges, States should review and reform their national violence-prevention legal frameworks, policies and programmes to ensure that they explicitly address children in the context of migration and their particular vulnerabilities. In particular, countries of origin should ensure that children left behind when their families migrate can benefit from affirmative actions through national social protection policies and programmes, and that their caregivers can gain access to public services and benefits aimed at strengthening their capacity to protect the children in their charge from violence.

52. Increased access to regular and safe migration pathways for children and their families would decrease the attraction to and necessity of reliance on human smugglers and the risks associated with irregular migration, including, especially for unaccompanied children, the risks of falling prey to trafficking and of other forms of exploitation and abuse.

53. Countries of origin, transit and destination should ensure that xenophobic attitudes, discourse and actions by civil servants, public institutions (including educational, health-care, judicial and law enforcement institutions) and communities are effectively addressed, publicly rejected and progressively eradicated.

54. To effectively respond to the needs of migrant children, whether regular or irregular migrants, States need to be able to identify those who are children, and their families or the children themselves should be able to prove that they are below 18 years of age. The Recommended Principles and Guidelines on Human Rights at International Borders contain additional guidance on this matter.

55. All children, including children accompanied by parents or other legal guardians, must be treated as individual rights holders, protected as children first and foremost, with their child-specific needs and rights considered equally and individually. Pursuant to article 3 (1) of the Convention on the Rights of the Child, in all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

56. **Children should be granted the right to be heard in proceedings concerning their or their parents' admission, residence, detention and expulsion procedures, and have access to administrative and judicial remedies against their own or their parents' detention or deportation, to ensure that all decisions are in their best interests.**

57. **Age-appropriate programmes should be promoted to enable children in countries of origin, transit and destination to have access to child-friendly information on safe migration, their rights and how to claim those rights.**

58. **Children affected by migration in all countries should be able to participate in the development, implementation and evaluation of policies concerning migration, integration, labour, education and efforts to combat xenophobia, among others.**

59. **Barriers that prevent the social and political participation of girls and boys in the context of migration should be removed. Those barriers include threats to their freedom and security and a lack of access to high-quality education, which significantly hinder their political engagement at the national, regional and international levels.**

60. **Policies fostering gender equality and empowerment in schooling, health and youth employment can help to enhance successful transitions to adulthood for migrant adolescents. It is important to collect reliable information on the patterns governing the gender division of responsibilities within migrant households, identifying gender inequalities that may hamper the opportunities of both girls and boys.**

61. **Children should never be criminalized or subject to punitive measures because of their migration status.**

62. **Non-custodial and community-based alternatives to detention should be implemented in accordance with the best interests of the child. Children in the context of migration should never be detained for the purpose of immigration control or on the basis of their or their parents' migration status. Detention is never in the best interests of the child and constitutes a child rights violation. Detention of migrant children cannot be justified to preserve family unity. The right of every child in the context of migration to family life should be fulfilled. Families should never be separated by State action or left separated by State inaction, unless that is determined to be in the best interests of the child. In cases involving the deportation of irregular migrant parents, States should explore the possibility of granting residency to the parents. Family reunification policies in transit and destination countries should enable children left behind to join their parents (or parents to join their children) in the destination country.**

63. **Any decision on the fate of a child in the context of migration should be taken by child protection officers, or if that is not possible, at least by well-trained migration officials who understand the rights and needs of children. Institutional reforms and measures aimed at strengthening child protection institutions and training migration officials should be promoted.**

64. Opportunities for regular migration at all skill levels should be increased to enable adolescents and young people to seek work abroad safely. Avenues for legal recruitment should be made accessible, safe and affordable for young migrants so that they do not resort to illegal or unsafe recruitment practices. Young migrants should also be informed of their rights and prepared ahead of their migration experiences. Information could be provided through orientation and support programmes for potential migrants on potential employment opportunities. Similar services could also help returning migrants to reintegrate. Establishing mechanisms for adolescents and young people by which they can maintain ties to family and friends in their country of origin could help to avoid social isolation and the disintegration of family structures, as well as to facilitate return migration. Systems should be put in place to monitor recruitment agencies, and labour inspection mechanisms should be sensitized to child migrants and child labour, especially in destination countries, in particular with respect to the types of jobs in which migrants predominate.

65. The availability of age-disaggregated and gender-disaggregated and comparable data on children affected by migration, reflecting their needs and risks that they face, needs to be strengthened.

66. States are called upon to implement their commitments made in the New York Declaration for Refugees and Migrants (General Assembly resolution 71/1), adopted on 19 September 2016, including to protect the human rights and fundamental freedoms of all refugee and migrant children, regardless of their status, and giving primary consideration at all times to the best interests of the child. They are also called upon to ensure that all such children benefit from education within a few months of arrival. Moreover, those children should not be criminalized or subjected to punitive measures because of their migration status or that of their parents, and under no circumstance should they be placed in migration detention.